

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ALABAMA
WESTERN DIVISION**

ACCC INSURANCE COMPANY,
O/B/O WARREN FLANNIGAN,

Plaintiff/Stakeholder,

v.

UNITED STATES DEPARTMENT
OF VETERANS AFFAIRS, et al.,

Defendants.

CIVIL ACTION NO.

NOTICE OF REMOVAL

COMES NOW the United States of America on behalf of its federal agency, the U.S. Department of Veterans Affairs (“VA”), by and through Jay E. Town, United States Attorney for the Northern District of Alabama, and Jack Hood, Assistant U.S. Attorney, and gives notice of removal of the above-captioned civil action pursuant to 28 U.S.C. § 1442(d)(1), and shows as follows:

1. The VA is a federal agency of the United States of America, with medical facilities located within Alabama and elsewhere.
2. On May 23, 2019, Plaintiff filed an interpleader action against the VA and others in the Circuit Court of Greene County, Alabama, in a case styled and numbered as *ACCC Insurance Company, on behalf of Warren Flannigan v.*

United States Department of Veterans Affairs, et al., Civil Action No. 35-CV-2019-900028.00 (Exhibit 1) The case has not yet gone to trial. Counsel for the United States received first notice that the VA had been sued in this proceeding on or about May 28, 2019, when the U.S. Attorney's Office was formally served with process. (Exhibit 1)

3. The United States and its federal agency, the VA, have not waived sovereign immunity to permit any such alleged cause of action or civil proceeding to be brought in state court.

4. Under 28 U.S.C. § 1442, actions commenced in state court against federal officers or agencies can be removed to federal district court for proper disposition. *See City of Jacksonville v. Department of Navy*, 348 F. 3d 1307, 1310-1311 (11th Cir. 2003) (28 U.S.C. § 1442(a)(1) authorizes removal by the United States and its agencies to assert sovereign immunity).

5. The Defendant United States of America, on behalf of its federal agency, the VA, files herewith a copy of the civil pleadings in *ACCC Insurance Company, on behalf of Warren Flannigan v. United States Department of Veterans Affairs, et al.*, Civil Action No. 35-CV-2019-900028.00, Circuit Court of Greene County, Alabama (Exhibit 2), which is all that it has received by way of process, pleadings, or orders to date forming the basis of removal.

WHEREFORE, the aforesaid action is hereby removed from the Circuit Court of Greene County, Alabama, to the U.S. District Court for the Northern District of Alabama, Western Division.

Respectfully submitted,

JAY E. TOWN
UNITED STATES ATTORNEY


s/ Jack Hood

Jack Hood
Assistant United States Attorney
U.S. Attorney's Office
State Bar No. D41J
1801 Fourth Avenue North
Birmingham, Alabama 35203
(205) 244-2103
(205) 244-2181 (fax)
jack.hood@usdoj.gov

CERTIFICATE OF SERVICE

I hereby certify that on June 25, 2019, I filed the foregoing with the Clerk of Court and served same by certified mail, U.S. postage pre-paid, to all of the following:

Megan K. McCarthy
HOLTSFORD, GILLILAND, HIGGINS,
HITSON & HOWARD, PC
PO BOX 4128
4001 Carmichael Road Suite 300
Montgomery, Alabama 36106
Phone: 334.215.8585
mmccarthy@hglawpc.com

Attorney for Plaintiff

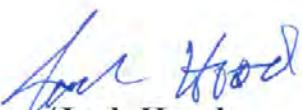
Winsceler Davis
4636 Greenview Drive
Tuscaloosa, AL 35401

Karen Simmons, or behalf of
Winsceler Davis
5273 Crowne Chase Parkway
Hoover, AL 35244

The DCH Healthcare Authority
809 University Boulevard Eastern
Tuscaloosa, AL 35401

Greene County EEMS
PO BOX 431
Eutaw, AL 35462

San Diego Department of Child
Support Services
Director Jeff Grissom
3666 Kearny Villa Road
San Diego, CA 92123


s/**Jack Hood**

Jack Hood
Assistant United States Attorney

**GOVERNMENT
EXHIBIT 1**



AlaFile E-Notice

35-CV-2019-900028.00

2019 MAY 29 AM 11:15



To: JAY E. TOWN/U.S. ATTY FOR NORTHERN DIST OF AL
1801 4TH AVENUE NORTH
BIRMINGHAM, AL, 35203

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF GREENE COUNTY, ALABAMA

ACCC INSURANCE COMPANY OBO WARREN FLANNIGAN V. WINSCELER DAVIS ET AL
35-CV-2019-900028.00

The following complaint was FILED on 5/23/2019 7:50:29 AM

Notice Date: 5/23/2019 7:50:29 AM

VERONICA MORTON-JONES
CIRCUIT COURT CLERK
GREENE COUNTY, ALABAMA
400 MORROW AVENUE
EUTAW, AL, 35462

205-372-3598
veronica.jones@alacourt.gov

State of Alabama Unified Judicial System Form C-34 Rev. 4/2017	SUMMONS - CIVIL -	Court Case Number 35-CV-2019-900028.00
IN THE CIRCUIT COURT OF GREENE COUNTY, ALABAMA ACCC INSURANCE COMPANY OBO WARREN FLANNIGAN V. WINSCELER DAVIS ET AL		
NOTICE TO: <u>JAY E. TOWN/U.S. ATTY FOR NORTHERN DIST OF AL, 1801 4TH AVENUE NORTH, BIRMINGHAM, AL 35203</u> <i>(Name and Address of Defendant)</i>		
<p>THE COMPLAINT OR OTHER DOCUMENT WHICH IS ATTACHED TO THIS SUMMONS IS IMPORTANT, AND YOU MUST TAKE IMMEDIATE ACTION TO PROTECT YOUR RIGHTS. YOU OR YOUR ATTORNEY ARE REQUIRED TO FILE THE ORIGINAL OF YOUR WRITTEN ANSWER, EITHER ADMITTING OR DENYING EACH ALLEGATION IN THE COMPLAINT OR OTHER DOCUMENT, WITH THE CLERK OF THIS COURT. A COPY OF YOUR ANSWER MUST BE MAILED OR HAND DELIVERED BY YOU OR YOUR ATTORNEY TO THE PLAINTIFF(S) OR ATTORNEY(S) OF THE PLAINTIFF(S), MEGAN KIME MCCARTHY</p>		
<i>[Name(s) of Attorney(s)]</i>		
<p>WHOSE ADDRESS(ES) IS/ARE: <u>P.O. BOX 4128, MONTGOMERY, AL 36103</u> <i>[Address(es) of Plaintiff(s) or Attorney(s)]</i></p>		
<p>THE ANSWER MUST BE MAILED OR DELIVERED WITHIN 30 DAYS AFTER THIS SUMMONS AND COMPLAINT OR OTHER DOCUMENT WERE SERVED ON YOU OR A JUDGMENT BY DEFAULT MAY BE RENDERED AGAINST YOU FOR THE MONEY OR OTHER THINGS DEMANDED IN THE COMPLAINT OR OTHER DOCUMENT.</p>		
TO ANY SHERIFF OR ANY PERSON AUTHORIZED BY THE ALABAMA RULES OF CIVIL PROCEDURE TO SERVE PROCESS:		
<p><input type="checkbox"/> You are hereby commanded to serve this Summons and a copy of the Complaint or other document in this action upon the above-named Defendant. <u>ACCC INSURANCE COMPANY</u> <input checked="" type="checkbox"/> Service by certified mail of this Summons is initiated upon the written request of <u>OBO WARREN FLANNIGAN</u> pursuant to the Alabama Rules of the Civil Procedure. <i>[Name(s)]</i></p>		
<u>5/23/2019 7:50:29 AM</u> <i>(Date)</i>	<u>/s/ VERONICA MORTON-JONES</u> <i>(Signature of Clerk)</i>	By: _____ <i>(Name)</i>
<p><input checked="" type="checkbox"/> Certified Mail is hereby requested. <u>/s/ MEGAN KIME MCCARTHY</u> <i>(Plaintiff's/Attorney's Signature)</i></p>		
RETURN ON SERVICE		
<p><input type="checkbox"/> Return receipt of certified mail received in this office on _____ <i>(Date)</i></p>		
<p><input type="checkbox"/> I certify that I personally delivered a copy of this Summons and Complaint or other document to _____ in _____ County, <i>(Name of Person Served)</i> _____ <i>(Name of County)</i></p>		
<p>Alabama on _____ <i>(Date)</i></p>		
<p><i>(Type of Process Server)</i> _____ <i>(Server's Signature)</i> _____ <i>(Address of Server)</i> _____ <i>(Server's Printed Name)</i> _____ <i>(Phone Number of Server)</i> _____</p>		



ELECTRONICALLY FILED
5/23/2019 7:50 AM
35-CV-2019-900028.00
CIRCUIT COURT OF
GREENE COUNTY, ALABAMA
VERONICA MORTON-JONES, CLERK
Date of Filing: 05/23/2019
Judge Code:

State of Alabama
Unified Judicial System
Form ARCCiv-93 Rev. 9/18

**COVER SHEET
CIRCUIT COURT - CIVIL CASE**
(Not For Domestic Relations Cases)

Ca:

35

CIRCUIT COURT OF
GREENE COUNTY, ALABAMA

VERONICA MORTON-JONES, CLERK

Date of Filing: 05/23/2019

Judge Code:

GENERAL INFORMATION

**IN THE CIRCUIT COURT OF GREENE COUNTY, ALABAMA
ACCC INSURANCE COMPANY OBO WARREN FLANNIGAN v. WINSCELER DAVIS ET AL**

First Plaintiff: Business Individual
 Government Other

First Defendant: Business Individual
 Government Other

NATURE OF SUIT: Select primary cause of action, by checking box (check only one) that best characterizes your action:

TORTS: PERSONAL INJURY

- WDEA - Wrongful Death
- TONG - Negligence: General
- TOMV - Negligence: Motor Vehicle
- TOWA - Wantonness
- TOPL - Product Liability/AEMLD
- TOMM - Malpractice-Medical
- TOLM - Malpractice-Legal
- TOOM - Malpractice-Other
- TBFM - Fraud/Bad Faith/Misrepresentation
- TOXX - Other: _____

TORTS: PERSONAL INJURY

- TOPE - Personal Property
- TORE - Real Property

OTHER CIVIL FILINGS

- ABAN - Abandoned Automobile
- ACCT - Account & Nonmortgage
- APAA - Administrative Agency Appeal
- ADPA - Administrative Procedure Act
- ANPS - Adults in Need of Protective Services

OTHER CIVIL FILINGS (cont'd)

- MSXX - Birth/Death Certificate Modification/Bond Forfeiture Appeal/Enforcement of Agency Subpoena/Petition to Preserve
- CVRT - Civil Rights
- COND - Condemnation/Eminent Domain/Right-of-Way
- CTMP - Contempt of Court
- CONT - Contract/Ejectment/Writ of Seizure
- TOCN - Conversion
- EQND - Equity Non-Damages Actions/Declaratory Judgment/Injunction/Election Contest/Quiet Title/Sale For Division
- CVUD - Eviction Appeal/Unlawful Detainer
- FORJ - Foreign Judgment
- FORF - Fruits of Crime Forfeiture
- MSHC - Habeas Corpus/Extraordinary Writ/Mandamus/Prohibition
- PFAB - Protection From Abuse
- EPFA - Elder Protection From Abuse
- FELA - Railroad/Seaman (FELA)
- RPRO - Real Property
- WTEG - Will/Trust/Estate/Guardianship/Conservatorship
- COMP - Workers' Compensation
- CVXX - Miscellaneous Circuit Civil Case

ORIGIN: F INITIAL FILING

A APPEAL FROM
DISTRICT COURT

O OTHER

R REMANDED

T TRANSFERRED FROM
OTHER CIRCUIT COURT

HAS JURY TRIAL BEEN DEMANDED? YES NO

Note: Checking "Yes" does not constitute a demand for a jury trial. (See Rules 38 and 39, Ala.R.Civ.P., for procedure)

RELIEF REQUESTED: MONETARY AWARD REQUESTED NO MONETARY AWARD REQUESTED

ATTORNEY CODE:

MCC149

5/23/2019 7:50:03 AM

Date

/s/ MEGAN KIME MCCARTHY

Signature of Attorney/Party filing this form

MEDIATION REQUESTED: YES NO UNDECIDED

Election to Proceed under the Alabama Rules for Expedited Civil Actions:

YES NO



IN THE CIRCUIT COURT OF GREENE COUNTY, ALABAMA

ACCC Insurance Company,
on behalf of Warren Flannigan,

Plaintiff/Stakeholder,
v.

Winsceler Davis, individually; Karen Simmons, on behalf of Winsceler Davis; The DCH Healthcare Authority; Greene County EMS; United States Department of Veterans Affairs; San Diego Department of Child Support Services; Fictitious Defendants A, B, C, and D, are those businesses, firms, or corporations who provided health insurance coverage and/or benefits to any named Defendant; Fictitious Defendants E, F, G, H, I, J, and K, are those health care providers who provided medical care to the Defendant, who claim any outstanding medical payments for those services; Fictitious Defendants L, M, N, and O, are those individuals, businesses, firms, or corporations who claim any damages or injuries as a result of the accident in question; and Fictitious Defendant P, are those relatives of any Plaintiff or Defendant by blood or marriage who can claim any damages or injuries as a result of the accident in question,

Defendants/Claimants.

COMPLAINT FOR INTERPLEADER AND DECLARATORY RELIEF

COMES NOW, Plaintiff and Stakeholder, ACCC Insurance Company, on behalf of Warren Flannigan, by and through the undersigned counsel, and hereby files this interpleader action pursuant to Rule 22 of the *Alabama Rules of Civil Procedure*. In support thereof, ACCC Insurance Company shows unto the Court the following:

2010 MAY 28 04:11:45

PARTIES

1. ACCC Insurance Company is an insurance company doing business and is properly licensed to do business in the State of Alabama.

2. Upon information and belief, Winsceler Davis, an individual over the age of nineteen (19), is a resident of Alabama. Winsceler Davis was involved in an automobile accident on December 2, 2018, in Greene County, Alabama.

3. Upon information and belief, Karen Simmons, an individual over the age of nineteen (19), is a resident of Alabama. Karen Simmons contends that Winsceler Davis granted her a durable power of attorney to act as an agent on his behalf.

4. Upon information and belief, The DCH Healthcare Authority is a corporation that operates DCH Regional Medical Center, a hospital in Alabama. The DCH Healthcare Authority's principal place of business is in Tuscaloosa, Alabama. It is believed that The DCH Healthcare Authority has a lien in the amount of \$44,646.13 for services provided to Winsceler Davis.

5. Upon information and belief, Greene County EMS is an ambulance service in Greene County, Alabama. Greene County EMS' principal place of business is in Greene County, Alabama. It is believed that Greene County EMS may have an outstanding bill for services provided to Winsceler Davis.

6. Upon information and belief, United States Department of Veterans Affairs is an executive department and agency of the United States government. United States Department of Veterans Affairs is presently headquartered in Washington, DC. United States Department of Veterans Affairs operates Tuscaloosa Veterans Affairs Medical Center, a hospital in Tuscaloosa, Alabama. It is believed that United States Department of Veterans Affairs may have a

subrogation claim for services provided to Winsceler Davis at Tuscaloosa Veterans Affairs Medical Center.

7. Upon information and belief, San Diego Department of Child Support Services is an executive department and agency of California. San Diego Department of Child Support Services is presently headquartered in San Diego, California. San Diego Child Support Services served ACCC Insurance Company with an Income Withholding Order in the amount of \$6,167.75, for delinquent child support payments owed by Winsceler Davis.

8. Upon information and belief, Fictitious Defendants/Claimants A, B, C, and D, are those businesses, firms, or corporations who provided health insurance coverage and/or benefits to any named Defendant/Claimant or Fictitious Defendant/Claimant, or paid any medical bills or expenses to or on behalf of any party herein.

9. Upon information and belief, Fictitious Defendants/Claimants E, F, G, H, I, J, and K are those health care providers who provided medical care to any named Defendant/Claimant or Fictitious Defendant/Claimant who claim any outstanding medical payments for those services.

10. Upon information and belief, Fictitious Defendants/Claimants L, M, N and O, are those individuals, businesses, firms or corporations who were injured or claimed damages or made payment in any form for injuries, insurance and/or health care insurance to the named Defendants/Claimants.

11. Upon information and belief, Fictitious Defendants/Claimants P are those individuals who are relatives by blood or marriage to any other Defendant or Claimant who can claim damages or injuries as a result of the accident in question.

FACTS

12. On or about December 2, 2018, Warren Flannigan, an insured of ACCC Insurance Company, was involved in an automobile accident with Defendant/Claimant Winsceler Davis. Winsceler Davis was a passenger in Warren Flannigan's vehicle. It is alleged that Warren Flannigan was traveling on County Road 181, in Greene County, Alabama, when he pulled from a stop sign in front of a vehicle. The vehicles collided and Winsceler Davis was allegedly injured. Fictitious Defendants/Claimants L, M, N and O were also allegedly injured.

13. ACCC Insurance Company is the liability insurer of Warren Flannigan, who was the owner and driver of the 2008 Nissan Altima involved in the accident at issue in this case.

14. On or about December 2, 2018, Warren Flannigan was covered by an insurance policy through ACCC Insurance Company that provided personal liability coverage. The policy limits are \$25,000.00 per person/\$50,000.00 per accident.

15. Without admitting liability and specifically denying liability, ACCC Insurance Company, on behalf of Warren Flannigan, seeks to interplead the total insurance proceeds of \$25,000.00 into the Circuit Court of Greene County, Alabama.

16. Karen Simmons claims that she is entitled to be paid by the aforementioned insurance payments, on behalf of Winsceler Davis. Karen Simmons produced a "Durable Power of Attorney for Financial Management" to ACCC Insurance Company, which purports to grant Karen Simmons a durable power of attorney to act on Winsceler Davis' behalf. This Power of Attorney must be recorded to be valid in Alabama. *See Ala. Code § 35-4-8; Ala. Code § 35-4-50.* Upon information and belief, this Power of Attorney was not recorded in the Office of the Probate Judge of Tuscaloosa County, which is the county in which Mr. Davis resides. ACCC

Insurance Company is in great doubt as to whether Karen Simmons is entitled to be paid any of the aforementioned insurance policy benefits.

17. DCH Regional Medical Center allegedly provided medical treatment to Winsceler Davis for injuries he allegedly sustained as a result of the accident. Defendant/Claimant The DCH Healthcare Authority is a corporation that operates DCH Regional Medical Center. It is believed that The DCH Healthcare Authority has a lien in the amount of \$44,646.13 for services provided to Winsceler Davis.

18. Greene County EMS allegedly provided emergency medical services to Winsceler Davis for injuries he allegedly sustained as a result of the accident. It is believed that Greene County EMS may have an outstanding bill for services provided to Winsceler Davis.

19. It is believed that Winsceler Davis received medical services from Tuscaloosa Veterans Affairs Medical Center after the accident. United States Department of Veterans Affairs is an executive department and agency of the United States government that operates Tuscaloosa Veterans Affairs Medical Center. It is believed that United States Department of Veterans Affairs may have a subrogation claim for services provided to Winsceler Davis.

20. ACCC Insurance Company received an Income Withholding Order from San Diego Department of Child Support Services in the amount of \$6,167.75, for outstanding child support payments owed by Winsceler Davis.

21. ACCC Insurance Company is in great doubt as to which Defendants/Claimants, if any, are entitled to be paid by the aforementioned insurance payments; and in what amount, if any should be paid by the aforementioned insurance payments; and in what amount, if any should be payable to each Defendant/Claimant.

RELIEF SOUGHT

22. Based on the forgoing, ACCC Insurance Company intends to interplead its policy limits of liability on behalf of its insured, Warren Flannigan. It is ACCC Insurance Company's intention to interplead its total policy limit of \$25,000.00 into the Circuit Court of Greene County, Alabama, and to obtain in exchange, a release and discharge of liability for and on behalf of Warren Flannigan. If the Court does not release and fully discharge Warren Flannigan and ACCC Insurance Company of liability, then ACCC Insurance Company seeks to dismiss this case and re-obtain the interpled total policy limit.

23. Pursuant to this interpleader, ACCC Insurance Company claims no beneficial interest in the insurance proceeds, but is a mere stakeholder.

24. Because the alleged liability of Warren Flannigan is in dispute, ACCC Insurance Company cannot determine which of the Defendants/Claimants, if any, are entitled to the insurance proceeds, and therefore, cannot deliver any part of said funds or pay any part of said funds without danger of being compelled to pay said funds to each of the Defendants/Claimants.

25. ACCC Insurance Company believes that it is in its best interest to interplead the insurance proceeds into the Court to avoid double or multiple liability and allow all possible claimants to challenge the distribution of the insurance proceeds under supervision of the Court, in exchange for receiving a release and discharge of liability and uninsured motorist coverage.

26. As allowed by Rule 22(b), of the *Alabama Rules of Civil Procedure*, ACCC Insurance Company, itself, and on behalf of Warren Flannigan, seeks to have ACCC Insurance Company and Warren Flannigan discharged from liability as to such claims arising out of the automobile accident occurring on December 2, 2018.

27. If the Court does not discharge Warren Flannigan and ACCC Insurance Company pursuant to Rule 22(b) of the *Alabama Rules of Civil Procedure*, ACCC Insurance Company wishes to dismiss this case and re-obtain the interpled remaining insurance policy limit of \$25,000.00 in liability limits from ACCC Insurance Company.

WHEREFORE, ACCC Insurance Company respectfully requests that the Court adjudge that each of the Defendants/Claimants be restrained from instituting any action against Warren Flannigan, or his insurer, ACCC Insurance Company, for recovery of the amount of the insurance policy or any part thereof, or any additional proceeds, and that the Defendants/Claimants be required to settle between themselves their rights to the money under the insurance policy, and that Warren Flannigan and his insurer, ACCC Insurance Company, be discharged from all liability.

Respectfully submitted this 23rd day of May, 2019.

/s/Megan K. McCarthy

MEGAN K. MCCARTHY (MCC149)
Attorney for Plaintiff/Stakeholder ACCC
Insurance Company on behalf of Warren Flannigan

OF COUNSEL:

Holtsford Gilliland Higgins Hitson & Howard, P.C.
Post Office Box 4128
Montgomery, Alabama 36103-4128
Telephone: (334) 215-8585
Facsimile: (334) 215-7101
mmccarthy@hglawpc.com

Please serve the following Defendants/Claimants by certified mail:

Winsceler Davis
4636 Greenview Drive
Tuscaloosa, AL 35401

Karen Simmons, on behalf of Winsceler Davis
5273 Crowne Chase Parkway
Hoover, Alabama 35244

The DCH Healthcare Authority
809 University Boulevard East
Tuscaloosa, Alabama 35401

Greene County EMS
P.O Box 431
Eutaw, Alabama 35462

The Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC 20571

Jay E. Town, Esq.
United States Attorney for the Northern District of Alabama
1801 4th Avenue North
Birmingham, Alabama 35203

William Barr, Esq.
Attorney General of the United States of America
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

San Diego Department of Child Support Services
Director Jeff Grissom
3666 Kearny Villa Road
San Diego, California 92123

**GOVERNMENT
EXHIBIT 2**



* * * IN THE CIRCUIT COURT OF GREENE COUNTY * * *

ACCC INSURANCE COMPANY OBO WARREN FLANNIGAN V. WINSCELER DAVIS ET AL
PLA ATTY: MCCARTHY MEGAN KIME DEF ATTY:

CASE: CV 2019 900028.00
JUDGE: EDDIE HARDAWAY, JR.
CASE SET FOR: PRETRIAL CONFERENCE
ON THIS DATE: 08/15/2019 AT: 0100 PM
PLACE: EUTAW, ALABAMA
GREENE COUNTY COURTHOUSE
EUTAW, ALABAMA

CASE 0058 OF 0060 CASES

(06/12/2019)

OPER: DER

01146

FORM: A465

VERONICA JONES
P O BOX 307
EUTAW AL 35462

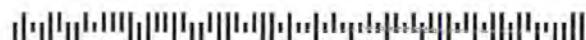
PRSR FIRST CLASS
US POSTAGE PAID
MONTGOMERY, AL
PERMIT #994

CASE NO: CV 2019 900028.00

RETURN SERVICE REQUEST



JAY E. TOWN/U.S. ATTY FOR NORTHERN
1801 4TH AVE N
BIRMINGHAM, AL 35203-2101





AlaFile E-Notice

35-CV-2019-900028.00

Judge: HON. EDDIE HARDAWAY

To: JAY E. TOWN/U.S. ATTY FOR NORTHERN DIST OF AL (PRO SE)
1801 4TH AVENUE NORTH
BIRMINGHAM, AL, 35203-0000

NOTICE OF ELECTRONIC FILING

IN THE CIRCUIT COURT OF GREENE COUNTY, ALABAMA

ACCC INSURANCE COMPANY OBO WARREN FLANNIGAN V. WINSCELER DAVIS ET AL
35-CV-2019-900028.00

The following matter was FILED on 5/23/2019 7:59:09 AM

C001 ACCC INSURANCE COMPANY OBO WARREN FLANNIGAN
MOTION FOR APPOINTMENT OF GUARDIAN AD LITEM
[Filer: MCCARTHY MEGAN KIME]

Notice Date: 5/23/2019 7:59:09 AM

2019 MAY 23 AM 11:45
CIRCUIT COURT CLERK
GREENE COUNTY, ALABAMA

VERONICA MORTON-JONES
CIRCUIT COURT CLERK
GREENE COUNTY, ALABAMA
400 MORROW AVENUE
EUTAW, AL, 35462

205-372-3598
veronica.jones@alacourt.gov

STATE OF ALABAMA Unified Judicial System 35-GREENE		Revised 3/5/08 <input type="checkbox"/> District Court <input checked="" type="checkbox"/> Circuit Court	Cas CV2 ELECTRONICALLY FILED 5/23/2019 7:58 AM 35-CV-2019-900028.00 CIRCUIT COURT OF GREENE COUNTY, ALABAMA VERONICA MORTON-JONES, CLERK
ACCC INSURANCE COMPANY OBO WARREN FLANNIGAN V. WINSCELER DAVIS ET AL		CIVIL MOTION COVER SHEET <i>Name of Filing Party:</i> C001 - ACCC INSURANCE COMPANY OBO WARREN FLANNIGAN	
<i>Name, Address, and Telephone No. of Attorney or Party, If Not Represented.</i> MEGAN KIME MCCARTHY P.O. BOX 4128 MONTGOMERY, AL 36103 <i>Attorney Bar No.:</i> MCC149		<input type="checkbox"/> Oral Arguments Requested	
TYPE OF MOTION			
Motions Requiring Fee <input type="checkbox"/> Default Judgment (\$50.00) Joinder in Other Party's Dispositive Motion (i.e. Summary Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00) <input type="checkbox"/> Judgment on the Pleadings (\$50.00) <input type="checkbox"/> Motion to Dismiss, or in the Alternative Summary Judgment (\$50.00) Renewed Dispositive Motion (Summary <input type="checkbox"/> Judgment, Judgment on the Pleadings, or other Dispositive Motion not pursuant to Rule 12(b)) (\$50.00) <input type="checkbox"/> Summary Judgment pursuant to Rule 56 (\$50.00) <input type="checkbox"/> Motion to Intervene (\$297.00) <input type="checkbox"/> Other _____ pursuant to Rule _____ (\$50.00)		Motions Not Requiring Fee <input type="checkbox"/> Add Party <input type="checkbox"/> Amend <input type="checkbox"/> Change of Venue/Transfer <input type="checkbox"/> Compel <input type="checkbox"/> Consolidation <input type="checkbox"/> Continue <input type="checkbox"/> Deposition <input type="checkbox"/> Designate a Mediator <input type="checkbox"/> Judgment as a Matter of Law (during Trial) <input type="checkbox"/> Disburse Funds <input type="checkbox"/> Extension of Time <input type="checkbox"/> In Limine <input type="checkbox"/> Joinder <input type="checkbox"/> More Definite Statement <input type="checkbox"/> Motion to Dismiss pursuant to Rule 12(b) <input type="checkbox"/> New Trial <input type="checkbox"/> Objection of Exemptions Claimed <input type="checkbox"/> Pendente Lite <input type="checkbox"/> Plaintiff's Motion to Dismiss <input type="checkbox"/> Preliminary Injunction <input type="checkbox"/> Protective Order <input type="checkbox"/> Quash <input type="checkbox"/> Release from Stay of Execution <input type="checkbox"/> Sanctions <input type="checkbox"/> Sever <input type="checkbox"/> Special Practice in Alabama <input type="checkbox"/> Stay <input type="checkbox"/> Strike <input type="checkbox"/> Supplement to Pending Motion <input type="checkbox"/> Vacate or Modify <input type="checkbox"/> Withdraw <input checked="" type="checkbox"/> Other _____ Motion for Appointment of Guardian Ad Litem	
*Motion fees are enumerated in §12-19-71(a). Fees pursuant to Local Act are not included. Please contact the Clerk of the Court regarding applicable local fees.			
<input type="checkbox"/> Local Court Costs \$ 0			
Check here if you have filed or are filing contemporaneously with this motion an Affidavit of Substantial Hardship or if you are filing on behalf of an agency or department of the State, county, or municipal government. (Pursuant to §6-5-1 Code of Alabama (1975), governmental entities are exempt from prepayment of filing fees) <input type="checkbox"/>		Date: 5/23/2019 7:57:58 AM	
		Signature of Attorney or Party /s/ MEGAN KIME MCCARTHY	

2019 MAY 23 AM 11:45



ELECTRONICALLY FILED
 5/23/2019 7:58 AM
 35-CV-2019-900028.00
 CIRCUIT COURT OF
 GREENE COUNTY, ALABAMA
 VERONICA MORTON-JONES, CLERK

IN THE CIRCUIT COURT OF GREENE COUNTY, ALABAMA

ACCC Insurance Company,
 on behalf of Warren Flannigan,

*

*

*

*

Plaintiff/Stakeholder,

*

v.

CV-2019-900028

*

*

Winsceler Davis, individually; Karen Simmons, on behalf of Winsceler Davis; The DCH Healthcare Authority; Greene County EMS; United States Department of Veterans Affairs; San Diego Department of Child Support Services; Fictitious Defendants A, B, C, and D, are those businesses, firms, or corporations who provided health insurance coverage and/or benefits to any named Defendant; Fictitious Defendants E, F, G, H, I, J, and K, are those health care providers who provided medical care to the Defendant, who claim any outstanding medical payments for those services; Fictitious Defendants L, M, N, and O, are those individuals, businesses, firms, or corporations who claim any damages or injuries as a result of the accident in question; and Fictitious Defendant P, are those relatives of any Plaintiff or Defendant by blood or marriage who can claim any damages or injuries as a result of the accident in question,

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Defendants/Claimants.

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2019 MAY 23 AM 11:45

RECEIVED
 CLERK'S OFFICE
 GREENE COUNTY, ALABAMA
 MAY 23, 2019
 BY [Signature]

1. On or about December 2, 2018, Warren Flannigan, an insured of ACCC Insurance Company, was involved in an automobile accident with Defendant/Claimant Winsceler Davis. Winsceler Davis allegedly suffered injuries in this accident. ACCC Insurance Company, on behalf of Warren Flannigan, seeks to interplead the total insurance proceeds of \$25,000.00 into the Circuit Court of Greene County, Alabama, and to obtain in exchange, a release and discharge of liability for and on behalf of Warren Flannigan.

2. Karen Simmons claims that she is entitled to be paid by the aforementioned insurance payments, on behalf of Winsceler Davis. Defendant/Claimant Karen Simmons produced a "Durable Power of Attorney for Financial Management" to ACCC Insurance Company, which purports to grant Karen Simmons a durable power of attorney to act on Winsceler Davis' behalf. This Power of Attorney must be recorded to be valid in Alabama. *See* Ala. Code § 35-4-8; Ala. Code § 35-4-50. Upon information and belief, this Power of Attorney was not recorded in the Office of the Probate Judge of Tuscaloosa, County, which is the county in which Mr. Davis resides.

3. ACCC Insurance Company has been asked to accept the Durable Power of Attorney for Financial Management. ACCC Insurance Company has a sufficient legal interest in the validity of the power of attorney in that ACCC Insurance Company may be subjected to double or multiple liability if the power of attorney is not valid.

3. ACCC Insurance Company has reason to believe that Defendant/Claimant Winsceler Davis is an incapacitated person within the meaning of the Code of Alabama, Section 26-2A-20(8), in that he is impaired by reason of mental and/or physical infirmities, to the extent of lacking sufficient understanding, memory and capacity to make and communicate responsible decisions.

4. Defendant/Claimant Winsceler Davis does not have any attorney to represent him and requires the appointment of an attorney with the power and duties of a Guardian Ad Litem to represent him in these proceedings.

WHEREFORE, ACCC Insurance Company, on behalf of Warren Flannigan, respectfully requests the Court to appoint an attorney with power of a Guardian Ad Litem to represent the interests of Defendant/Claimant Winsceler Davis.

Respectfully submitted this 23rd day of May, 2019.

/s/Megan K. McCarthy

MEGAN K. MCCARTHY (MCC149)
Attorney for Plaintiff/Stakeholder ACCC
Insurance Company on behalf of Warren Flannigan

OF COUNSEL:

Holtsford Gilliland Higgins Hitson & Howard, P.C.
Post Office Box 4128
Montgomery, Alabama 36103-4128
Telephone: (334) 215-8585
Facsimile: (334) 215-7101
mmccarthy@hglawpc.com

Please serve the following Defendants/Claimants by certified mail:

Winsceler Davis
4636 Greenview Drive
Tuscaloosa, AL 35401

Karen Simmons, on behalf of Winsceler Davis
5273 Crowne Chase Parkway
Hoover, Alabama 35244

The DCH Healthcare Authority
809 University Boulevard East
Tuscaloosa, Alabama 35401

Greene County EMS
P.O Box 431
Eutaw, Alabama 35462

The Department of Veterans Affairs
810 Vermont Avenue NW
Washington, DC 20571

Jay E. Town, Esq.
United States Attorney for the Northern District of Alabama
1801 4th Avenue North
Birmingham, Alabama 35203

William Barr, Esq.
Attorney General of the United States of America
950 Pennsylvania Avenue NW
Washington, DC 20530-0001

San Diego Department of Child Support Services
Director Jeff Grissom
3666 Kearny Villa Road
San Diego, California 92123